

**IN THE COURT OF APPEALS**  
**FIRST APPELLATE DISTRICT OF OHIO**  
**HAMILTON COUNTY, OHIO**

|                      |   |                        |
|----------------------|---|------------------------|
| STATE OF OHIO,       | : | APPEAL NO. C-090626    |
|                      | : | TRIAL NO. 09CRB-9552   |
| Plaintiff-Appellee,  | : |                        |
| vs.                  | : | <i>JUDGMENT ENTRY.</i> |
| SHANICE HOWARD,      | : |                        |
| Defendant-Appellant. | : |                        |

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

On March 26, 2009, defendant-appellant Shanice Howard was charged with one count of criminal damaging, a second-degree misdemeanor, in violation of R.C. 2909.06. After a bench trial on August 31, 2009, Howard was found guilty of the charge. The trial court sentenced Howard to 90 days' incarceration, which the court suspended, ordered her to pay court costs and \$764.48 in restitution, placed her on one year of community control, and ordered her to stay away from the victim, Laquenda Dunigan. Howard has appealed, asserting one assignment of error.

In her only assignment of error, Howard argues that her conviction was against the manifest weight of the evidence. Specifically, Howard contends that her conviction was primarily based upon Dunigan's unreliable identification of her.

When examining a challenge to the manifest weight of the evidence, a reviewing court "review[s] the entire record, weighs the evidence and all reasonable

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

inferences, considers the credibility of witnesses, and determines whether, in resolving conflicts in the evidence, the [trier of fact] clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.”<sup>2</sup>

After a complete review of the record, we overrule Howard’s assignment of error and hold that the manifest weight of the evidence supports Howard’s conviction. The facts reveal that on the evening of March 26, 2009, Dunigan was at her job, working the drive-through window at a downtown Cincinnati Captain D’s restaurant. During her shift, she noticed a female squatting between her car, a 2004 Ford Focus, and another car. Dunigan did not immediately recognize this individual. After a period of time, Dunigan watched the female stand up with a “smirk” on her face, get into another car, and drive away. Soon afterward, a co-worker informed Dunigan that someone had scratched the phrase “Bitch I got him” into the side of Dunigan’s car. Dunigan promptly called the police.

Although she had never personally met her, Dunigan informed the responding officer that she believed that the individual who had damaged her car was Howard. Dunigan believed this because Howard was then dating the father of Dunigan’s child, and, more importantly, because Howard and Dunigan had previously exchanged hostile telephone calls and text messages. The responding officer obtained a photograph of Howard, and Dunigan positively identified Howard as the person she had seen earlier in the evening.

Although Howard claimed that she had never damaged Dunigan’s car, testified that she had not gone to Captain D’s on the evening in question, and had her brother testify on her behalf that she had been with him the entire evening, the trial

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<sup>2</sup> *State v. Thompkins* (1977), 78 Ohio St.3d 380, 387, 678 N.E.2d 541, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717.

court chose not to believe Howard's or her brother's testimony. The weight to be given the evidence and the credibility of the witnesses were primarily for the trier of fact.<sup>3</sup> Considering all the evidence and the testimony that we have already summarized, we cannot say that Howard's conviction was against the manifest weight of the evidence.

We find no merit to Howard's lone assignment of error and affirm the judgment of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**CUNNINGHAM, P.J., HENDON and MALLORY, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on September 8, 2010

per order of the Court \_\_\_\_\_.

Presiding Judge

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<sup>3</sup> *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus.